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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT CALIFORNIA

ALTON HARDING,

Plaintiff,

v.

MACY'S, and DOES 1 through 20,
Inclusive,

Defendants.

CASE NO. : 16CV00772

**PLAINTIFF'S RESPONSE TO
COURT'S REQUEST AS TO WHY
CASE SHOULD NOT BE DISMISSED
FOR LACK OF PROSECUTION;
DECLARATION OF BARRY ZELNER**

PLAINTIFF SUBMITS THE following Declaration of Barry Zelner in response to
the Court's Request As To Why The Case Should Not Be Dismissed for Lack of
Prosecution.

DATED: June 13, 2016

LAW OFFICES OF BARRY S. ZELNER

By: 

Barry S. Zelner
Attorney for Plaintiff

DECLARATION OF BARRY ZELNER

I, Barry Zelner, declare:

1. I am an attorney duly licensed to practice law in the State of California and attorney-of-record for Plaintiff herein.

2. On or about March 15, 2016, Plaintiff filed in the matter of Alton Harding v. Macy's in Orange County Superior Court, Case No. 30-201600840970-CU-PO-CJC. An Amendment to the Complaint was filed on April 12, 2016 with the Orange County Superior Court.

3. On April 19, 2016, Defendant filed an Answer to the lawsuit on behalf of Macy's West Stores, Inc.

4. On April 27, 2016, Plaintiff served Special Interrogatories and Request for Production of Documents on Macy's. To date, Plaintiff has not received responses which are long overdue and Plaintiff has requested that Defendant responds to those forthwith without objection or a motion will be filed to compel responses.

5. Sometime after April 25, 2016 I learned that Defendant had filed a Notice to State Court in the adverse party of the removal of an action to Federal Court. I believe I received that document sometime in the early part of May even though there is a proof of service dated April 25, 2016.

6. Thereafter, I received a call from the Federal Court Clerk indicating she had emailed me but I had not responded. She further indicated that I was to contact defense counsel and have them serve me with the initial Court orders. That occurred sometime in the middle of May 2016. I was also advised that we are not part of the Pacer program and I needed to set that up. I was under the impression that we had previously set that up several years as I do not handle any federal cases. I subsequently learned that for some reason it had been cancelled and has now been reactivated.

7. Upon receiving the initial court orders specifically with the ADR Mediation Order, I have not only written but left several message with defense counsel about proceeding to that program but have had no response. Prior to the removal, the parties

1 attended a mediation prior to filing of this lawsuit which for all intents and purposes was
2 worthless and had suggested to defense counsel that we attend another mediation since at the
3 initial mediation his client did not appear and as indicated was meaningless. I was under the
4 impression that defense counsel Jeffrey Lenkov was going to agree to that, however, at this
5 point in time he has indicated his client does not want to so attend.

6 8. About June 5, 2016, I received Defendant's Request for Admissions,
7 Interrogatories and Demand for Production of Documents. These will be responded to in a
8 timely fashion.

9 9. Based on the documents I have received as well as reviewed in the Court file,
10 I believe I complied with all the Court's request and have clearly been prosecuting this
11 matter and hereby request that the matter for lack of prosecution go off calendar.

12 I declare under penalty of perjury that the foregoing is true and correct and if called
13 as a witness could testify competently thereto.

14 Executed this 13 day of June, 2016, at Encino, California.

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17 BARRY ZELNER
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